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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,646	07/02/2003	Burns Phillips	50243-0001	4622

7590

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EXAMINER

REIMERS, ANNETTE R

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,646

Applicant(s)

PHILLIPS ET AL.

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which the applicant regards as the invention.

In claim 12, line 1, "the latch" lacks proper antecedent basis.

Claim Objections

Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. For examination purposes, claim 11 will be considered to depend from claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

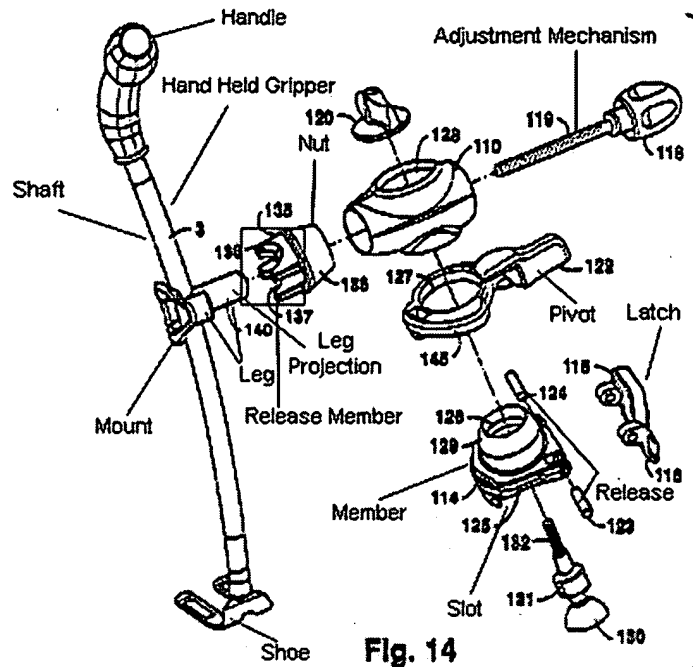
Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Hu et al. (U.S. Patent Number 6,331,158).

Hu et al. disclose various embodiments of a surgical retractor comprising a laterally extending rack with a proximal and distal end, a first arm, 15, comprising a plurality of teeth, connected to the rack at a first location and extending longitudinally from the first location to an end, a moveable second arm, 14, having a housing, 22, slidably engaging a portion of the rack and extending longitudinally from the housing to an end, the housing having an adjustment mechanism, 24, for allowing the positioning of the housing relative to the rack at a desired location and a retractor clamp, 20, having a slot therein and capable of being slidably engaged on the second arm (see figures 1 and 14 below and column 8, lines 40-47). The clamp also has a leg extending cantileveredly therefrom away from the slot, wherein the leg has a mount for receiving a connector head of a retractor blade, and wherein the mount is substantially parallel to the slot (see figures 1 and 14 below).

The clamp further comprises a member containing the slot therein, wherein the leg is angularly positionable relative to the member, and a latch, 116, is connected to the member for selectively retaining the clamp at a selected position relative to the second arm, wherein the latch is opposite at least a portion of the slot from the leg (see figure 14 below). In addition, the member has intermediate upper and lower surfaces, wherein the latch is coupled to the lower surface and is biased into a plane of the slot to selectively retain the clamp relative to the second arm (see figure 14 below).

The clamp also comprises a threaded adjustment mechanism, 119, coupled to the leg and operation of the adjustment mechanism moves the leg and the mount relative to the member (see figure 14 below). A release member, 135-137, disengages the shaft from the leg, and the leg has a projection in which the threaded shaft passes through (see figure 14 below).

The surgical retractor further comprises a pivot, 122, connecting the member and the leg, wherein the threaded shaft has a nut, 138-139, which moves along an axis of the shaft upon rotation of the shaft and axial movement of the nut against the projection of the leg, rotating the leg relative to the pivot. The surgical retractor also comprises a release, 123 and 124, coupled to the latch, wherein operation of the release overcomes biasing forces acting on the latch allowing the latch to be moved out of the plane of the latch so that the clamp may be moved relative to the second arm (see figure 14 below).



In addition, the surgical retractor is in combination with a hand held gripper having a handle connected by a rotatable shaft, 3, to a shoe, 570, wherein the shoe has a slot, 571, capable of receiving a connector head of a retractor blade, and wherein the connector head is capable of passing through the mount in the leg and being at least partially retained in the mount by the shoe (see figures 14 above and 42). The shaft further comprises a post, 572, wherein rotation of the shaft in a first direction extends the post into the shoe for securing the head to the shoe with the clamp connected to the connector head, and wherein rotation of the shaft in the first direction extends the post into the slot until it contacts the connector head (see figures 14 above and 42).

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Furthermore, the shaft is angularly connected relative to the shoe, and the member has a groove, 151 (see figures 14 above and 15A).

Response to Arguments

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER